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FEDERAL ELECTION COMMISSION

999 E Street N.W.
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

MUR 6413

DATE COMPLAINT RECEIVED: 10/28/2010

DATE OF NOTIFICATIONS: 11/4/2010

DATE OF LAST RESPONSE: N/A

DATE ACTIVATED: 2/7/2011

EXPIRATION OF SOL: 10/25/2015 – 11/01/2015

COMPLAINANT:

California Young Democrats and
Alissa Ko, President

RESPONDENT:

Taxpayer Network

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(f)
2 U.S.C. § 441d
11 C.F.R. § 100.29
11 C.F.R. § 104.20
11 C.F.R. § 110.11

INTERNAL REPORTS CHECKED:

FEC Database

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

This matter involves allegations that Taxpayer Network, a 501(c)(4) non-profit corporation, violated the Federal Election Campaign Act of 1971, as amended ("the Act"), by failing to properly report and include complete disclaimers on two television advertisements alleged to have been run "across California" identifying California Senator Barbara Boxer ("Boxer Ads") during the weeks leading up to the 2010 general election.¹ Complaint at 2. The complaint contends that the Boxer Ads, which referenced a candidate for federal office within sixty days of the election, constituted electioneering communications, and therefore required

¹See <http://www.youtube.com/watch?v=Pot25ZJAje4> and <http://www.youtube.com/watch?v=Pde4ljahTCg>.

1 disclosure to the Federal Election Commission ("the Commission") and a complete disclaimer
2 that included contact information, an indication of whether or not it was authorized by a
3 candidate, and an audible statement as to who was responsible for the content of the
4 communication. Taxpayer Network did not report these communications to the Commission,
5 and the written disclaimer lacked contact information or an indication of whether or not it was
6 authorized by a candidate. Further, there was no audible statement as to responsibility for the
7 content. Taxpayer Network also did not file any response to the complaint.

8 As discussed below, because the Boxer Ads appear to qualify as reportable electioneering
9 communications, we recommend that the Commission find reason to believe that Taxpayer
10 Network violated 2 U.S.C. §§ 434(f) and 441d by failing to properly report, and include
11 complete disclaimers on, the communications.

12 II. FACTUAL AND LEGAL ANALYSIS

13 A. Factual Background

14 Taxpayer Network's website indicates that it is a section 501(c)(4) non-profit
15 corporation. See <http://www.taxpayernetwork.com>. It is not registered with the Commission,
16 nor has it filed any reports with the Commission.

17 The Taxpayer Network website states that "its goal is to educate the public about the
18 policies and policy-makers involved in issues of taxation, spending and regulation of the
19 economy." See *id.* On a monthly basis from January to September 2010, Taxpayer Network
20 purports to have recognized a single member of Congress as a "Taxpayer's Champion" for his or
21 her work to limit taxes and reduce waste in Washington. *Id.* The Taxpayer Network website
22 further states that it "uses television, radio, direct mail and the Internet to communicate its
23 messages." *Id.* The website currently contains a single television ad which criticizes the voting

1 record of California Senator Barbara Boxer, a candidate for U.S. Senate in 2010. *Id.* The
2 website does not appear to have been updated since November 2010. As noted above, Taxpayer
3 Network did not respond to the complaint.

4 Complainant alleges that, one week before the 2010 general election, Taxpayer Network
5 aired two television advertisements "across California" that refer to and include photographs of
6 Senator Boxer. Complaint at 1. See <http://www.youtube.com/watch?v=Pot25ZJAjo4> and
7 <http://www.youtube.com/watch?v=Pde4ljxhTCg>. The two Taxpayer Network ads, which are
8 very similar, sharply criticize Boxer's voting record, but do not make any clear reference to, or
9 expressly advocate her defeat in, the upcoming election.

10 Complainant contends that if Taxpayer Network spent \$10,000 for the communications,
11 the Boxer Ads qualify as electioneering communications and, therefore, should have been
12 reported to the Commission pursuant to 2 U.S.C. § 437g(a)(1). Complaint at 1-2; *see also*
13 11 C.F.R. § 100.29(b)(3) and (b)(5). Further, Complainant contends that while the Boxer Ads
14 contained a printed disclaimer indicating that Taxpayer Network paid for the communications,
15 the disclaimer did not include a street address, telephone number, or website address. Further,
16 the Boxer Ads do not contain an audio or spoken message as to the person responsible for the
17 content of the advertisements. *Id.* at 2-3. Thus, the complaint alleges that the advertisements do
18 not satisfy the disclaimer requirements at 2 U.S.C. § 441d.

19 **B. Legal Analysis**

20 The Act requires that every person who makes aggregate disbursements of \$10,000 or
21 more to produce and air "electioneering communications" must file disclosure reports with the
22 Commission within 24 Hours of making the communication. 2 U.S.C. § 434(f). The Act defines
23 an "electioneering communication" as a broadcast, cable, or satellite communication that refers

1 to a clearly identified federal candidate, is publicly distributed within sixty days before a general
2 election or thirty days before a primary election, and is targeted to the relevant electorate.

3 2 U.S.C. § 434(f)(3)(A)(i); 11 C.F.R. § 100.29. In *Citizens United v. Federal Election*
4 *Commission*, the Supreme Court struck down as unconstitutional the Act's prohibition on
5 corporate financing of electioneering communications at 2 U.S.C. § 441b(b)(2), *see* 130 S.Ct.
6 876, 913 (2010), but upheld the Act's disclosure and disclaimer provisions applicable to
7 electioneering communications at 2 U.S.C. §§ 434(f) and 441d, and 11 C.F.R. §§ 104.20 and
8 110.11. *See id.* at 915-916. Thus, persons making electioneering communications that cost, in
9 the aggregate, more than \$10,000 must disclose such electioneering communications in reports
10 filed with the Commission.

11 The available information indicates that the Boxer Ads, which included references to and
12 photographs of Senator Boxer, were publicly distributed in the state of California, which was the
13 relevant electorate for Senator Boxer, within a week of the general election. Complaint at 1-2.

14 While the complaint lacks specific information regarding the cost of the Taxpayer Network
15 communications, it alleges that the cost of running two different communications "for some
16 time" on television stations across California would result in disbursements of the requisite
17 \$10,000 threshold. *See* Complaint at 2-4. This allegation is un rebutted. Given the rapidly rising
18 cost of television advertising in California prior to the 2010 election, there is a credible basis for
19 the assertion that the Taxpayer Network may have spent more than the \$10,000 electioneering
20 communication threshold for the Boxer Ads. *See* Meg James, *TV Still the Favored Medium for*
21 *Political Ad Spending*, Los Angeles Times, October 29, 2010,
22 <http://articles.latimes.com/2010/oct/29/business/la-fi-ct-political-ads-20101029>.

1 Accordingly, we recommend that the Commission find reason to believe that Taxpayer
2 Network violated 2 U.S.C. § 434(f) by failing to report electioneering communications.

3 The Act also requires that when any person who is not a candidate or authorized political
4 committee makes a disbursement for an electioneering communication, such communication
5 include a disclaimer stating who paid for the message, stating that it was not authorized by any
6 candidate or candidate's committee, and listing the permanent street address, telephone number,
7 or World Wide Web address of the person who paid for the communication. 2 U.S.C. § 441d(a);
8 11 C.F.R. § 110.11(b)(3). Further, for television ads, the disclaimer must include an audio
9 statement as to who or what group is responsible for the content of the advertisement. 2 U.S.C.
10 § 441d(d)(2); 11 C.F.R. § 110.11(c)(4)(i)-(ii).

11 While Taxpayer Network is identified in a written disclaimer that appears on the screen
12 ("Paid for by Taxpayer Network"), that disclaimer does not reveal its street address, telephone
13 number, or World Wide Web address. See MUR 6317 (Timothy Stewart/UDCI) (Commission
14 found reason to believe that § 441d was violated where printed disclaimer did not include
15 address, telephone number, or website). Further, the communications do not state that they were
16 not authorized by any candidate or candidate's committee, do not list the required contact
17 information of the person paying for the communications as required by 11 C.F.R.
18 § 110.11(b)(3), and do not contain an audio statement regarding the person responsible for the
19 content of the advertisements as required by 11 C.F.R. § 110.11(c)(4). See, e.g., MUR 5889
20 (Republicans for Trauner) (Commission found reason to believe that § 441d was violated where
21 a radio ad did not contain spoken message identifying responsible party). Thus, the
22 advertisements do not fully comply with the disclaimer requirements for electioneering
23 communications.

Accordingly, we recommend that the Commission find reason to believe that Taxpayer Network violated 2 U.S.C. § 441d by failing to include sufficient disclaimers on its television advertisements.

III. PROPOSED INVESTIGATION

A limited investigation is necessary to determine how much was spent on the television advertisements in order to confirm that Taxpayer Network actually exceeded the \$10,000 threshold required to trigger the electioneering communication reporting requirements, and to determine any amount in violation so as to recommend an appropriate conciliation agreement.

We would attempt to conduct this investigation informally, using written questions and requests for documents. We recommend that the Commission authorize the use of compulsory process in the event that it becomes necessary to utilize formal interrogatories, document subpoenas, and/or deposition subpoenas.

IV. RECOMMENDATIONS

1. Find reason to believe that Taxpayer Network failed to report electioneering communications, in violation of 2 U.S.C. § 434(f).
2. Find reason to believe that Taxpayer Network failed to include proper disclaimers on its television advertisements, in violation of 2 U.S.C. § 441d.
3. Authorize the use of compulsory process, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.
4. Approve the attached Factual and Legal Analysis.

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5. Approve the appropriate letters.

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Acting General Counsel

Kathleen M. Guith
Acting Associate General Counsel for Enforcement

Date

6-7-11


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